

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
MR. GARY L. HOLSINGER
DBA / HOLSINGER BROTHERS PARTNERSHIP
UST Facility at 124 Massanutten Street, Strasburg, VA
Facility Identification No. 6018051

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and Mr. Gary L. Holsinger to resolve certain violations of the State Water Control Law and regulations at Mr. Gary L. Holsinger's Underground Storage Tank Facility located at 124 Massanutten Street in Strasburg, Shenandoah County, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§10.1-1184 and 62.1-44.7.
2. "Code" means the Code of Virginia (1950), as amended.
3. "UST" means underground storage tank.
4. "Mr. Holsinger" means Mr. Gary L. Holsinger, dba / Holsinger Brothers Partnership, the UST owner within the meaning of Virginia Code § 62.1-44.34:8.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality.
7. "Facility" means the retail gasoline station and USTs owned and operated by Mr. Holsinger located at 124 Massanutten Street, Strasburg, Shenandoah County, Virginia. The

Facility's USTs are further identified by UST numbers: 1, 2, 3 & 4.

8. "Order" means this document, also known as a Consent Special Order.
9. "Regional Office" means the Valley Regional Office of the Department.
10. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, corrosion protection and release detection requirements.
11. "STI-P3 tank" means a UST certified by the Steel Tank Institute to have three different methods of corrosion protection.
12. "Form 7530" means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-60, required that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Mr. Holsinger is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On January 28, 2002, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. UST notification information submitted on Form 7530 was incorrect in apparent violation of 9 VAC 25-580-70 ¶A.
 - b. Release detection was not being performed on the USTs in apparent violation of 9 VAC 25-580-140 ¶1.
 - c. Release detection was not being performed on the piping associated with USTs #1, 2 & 3 in apparent violation of 9 VAC 25-580-140 ¶2.
 - d. Corrosion Protection had not been installed on sections of the piping associated with USTs #1, 2 & 3 in apparent violation of 9 VAC 25-580-60 ¶3.

- e. Financial assurance documentation had not been submitted to the DEQ in apparent violation of 9 VAC 25-590-10 *et seq.*

As a result of this formal inspection, DEQ staff sent a Warning Letter (No. 02-08-VRO-6) to Mr. Holsinger on August 19, 2002, for these apparent violations of the Regulations. The letter requested that Mr. Holsinger respond by August 29, 2002, and included a copy of the formal inspection results, detailing the apparent violations noted above.

- 4. On September 4, 2002, DEQ staff received written correspondence from Mr. Holsinger which included: a) an amended and incomplete Form 7530, b) a copy of inventory control records for USTs #1, 2 & 3 for July 2002, and c) financial assurance documentation. The inventory control records referenced above did not qualify as release detection.
- 5. On September 25, 2002, DEQ staff received copies of Statistical Inventory Reconciliation (SIR) records for USTs #1, 2 & 3 for August 2002. All records indicated passing results and qualify as release detection records for the USTs and associated piping. After reviewing the submissions, DEQ contacted Mr. Holsinger to inform him of the continuing violations noted in the January 28, 2002, inspection and requested that these be resolved. They were an incorrect Form 7530 and failure to protect the piping associated with USTs 1, 2 & 3 from corrosion.
- 6. On March 5, 2003, DEQ staff received written correspondence from Mr. Holsinger indicating his intent to comply with the Regulations. On this same date, DEQ staff received a facsimile of SIR release detection results for USTs #1, 2 & 3 for the months of October, November and December 2002. This effectively resolves the release detection violation previously noted. DEQ staff also received another incomplete Form 7530 for the facility, registering the material of construction for the USTs as being composite. The material of construction for the USTs was previously registered as being STI-P3 tanks, on both a 1986 and a 1987 Form 7530. DEQ staff did not receive supporting documentation confirming the change in the material of construction for UST #1, 2 & 3.
- 7. On April 23 2003, DEQ staff received, from Mr. Holsinger, a separate incomplete Form 7530. This Form 7530 included invoices and documented the incomplete closure of UST #4 (waste oil).
- 8. On July 23, 2003, DEQ staff issued NOV No. 03-07-VRO-3 to Mr. Holsinger, for the apparent continuing violation of the Regulations 9 VAC 25-580-60 (Upgrading of existing UST systems) on USTs #1, 2 & 3; for apparent violations of 9 VAC 25-580-70 (Notification requirements) and 9 VAC 25-580-320 (Permanent closures and changes-in-

service). The NOV requested that Mr. Holsinger respond to the Department by August 4, 2002.

9. On August 26, 2003, DEQ staff met with Mr. Holsinger to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations.
10. On September 14, 2003, DEQ staff received:
 - documentation confirming the material of construction (STI-P3 tank) for USTs #1, 2 & 3 and their associated piping,
 - complete closure documentation for UST #4,
 - cathodic protection installation records for the Facility piping, and
 - cathodic protection test results for USTs #1, 2, & 3 and their associated piping, from Mr. Holsinger. This documentation effectively resolved the majority of the outstanding violations noted at the facility.
11. On October 1, 2003, DEQ staff received a correctly completed Form 7530 for the Facility, resolving the remaining violation noted.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders Mr. Holsinger and Mr. Holsinger agrees that:

1. Mr. Holsinger shall pay a civil charge of \$4,000.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to ATreasurer of the Commonwealth of Virginia and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240
2. Mr. Holsinger shall also include his Social Security Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Holsinger, for good cause shown by Mr. Holsinger, or on its own motion after notice and opportunity to be heard.

2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Mr. Holsinger admits the jurisdictional allegations in the Order.
4. Mr. Holsinger consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Holsinger declares he has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mr. Holsinger to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Holsinger shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mr. Holsinger must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Holsinger shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may

delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. The reasons for the delay or noncompliance;
- b. The projected duration of such delay or noncompliance;
- c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

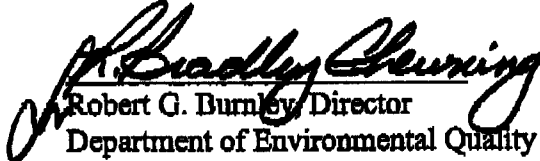
Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Mr. Holsinger intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Holsinger. Notwithstanding the foregoing, Mr. Holsinger agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Mr. Holsinger petitions the Regional Director to terminate the Order after he has completed all requirements of the Order. The Director's determination that Mr. Holsinger has satisfied all the requirements of the Order is a Acas decision within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to Mr. Holsinger.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Holsinger from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, Mr. Holsinger voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13th day of September 2004.


Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Mr. Holsinger:

Date: 4/29/04

By: 
Gary L. Holsinger
Title: Owner

Commonwealth of Virginia, City/County of Shenandoah

~~The foregoing instrument was acknowledged before me this~~ 27th day of April, 2004, by

Mr. Gary L. Holsinger.

4/29/04
Date


Notary Public

My commission expires:

August 31, 2007

D. COVALLEY

MAY 03 2004

TO: _____
FILE: _____